

KIMBERLY MORE
CROWLEY FLECK PLLP
1667 WHITEFISH STAGE ROAD
P. O. BOX 759
KALISPELL, MT 59903-0759
KMORE@CROWLEYFLECK.COM

Attorneys for Defendant

UNITED STATE DISTRICT COURT, DISTRICT OF MONTANA
GREAT FALLS DIVISION

Danny Guilbert,
Plaintiff,

vs.

Fred Loya Insurance Agency, Inc.,
Loya Insurance Company, & DOES 1-
5,
Defendants.

Cause No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1332, 1441, and 1446, Defendant Fred Loya Insurance Agency, Inc. and Loya Insurance Company (hereinafter “Loya”), by and through its undersigned counsel, Crowley Fleck, PLLP, respectfully hereby gives Notice of Removal of the Complaint from the Montana Eighth Judicial District Court, Cascade County to the United States District Court for the District of Montana. As grounds for this removal, Loya states as follows:

1. On February 6, 2015 an automobile accident occurred in Great Falls, MT involving Plaintiff and Armando Sanchez (“Sanchez). Plaintiff

alleged personal injury and property damage as a result of the accident.

Sanchez was insured by Loya. Plaintiff sought payment for damages from Loya. Plaintiff and Loya engaged in negotiations but a settlement was not reached. On April 4, 2018, Plaintiff filed suit against Loya under the Unfair Trade Practices Act, MCA §33-18-201, and for common law bad faith. A copy of the Complaint is attached hereto as **Exhibit A**.

2. The Complaint was served on Loya April 9, 2018. *See* Service of Process Transmittal, attached hereto as **Exhibit B**.

3. Counsel for Plaintiff has agreed to an extension of time within which to file a response to Plaintiff's complaint until and including May 11, 2018. Loya's Answer to the Complaint will be timely filed.

4. Pursuant to 28 U.S.C. § 1446(d), a copy of this notice of removal is being contemporaneously filed with the clerk of the District Court for Cascade County, Montana and a copy has been served on plaintiff as indicated on the attached certificate of service. *See* **Exhibit C**.

5. Plaintiff is a resident of Montana, having an address of 307 15th St. N., Great Falls, MT 59401.

6. Loya is incorporated in Texas with its principal place of business located at 1800 Lee Trevino, El Paso, TX 79936.

7. Pursuant to 28 U.S.C. § 1446(b), Loya has thirty days from the

receipt by Plaintiff, through service or otherwise, of the initial pleadings setting forth the claim for relief upon which such action or proceeding is based to remove a case.

8. Notice of Removal has been filed within thirty days after receipt of Plaintiff's Complaint for Declaratory Relief and Jury Demand.

Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

9. The Complaint is hereby removed by Defendant Loya from the District Court, Routt County, Colorado to the United States District Court for the District of Colorado. 28 U.S.C. § 1446(a).

10. The Plaintiff has confirmed that they are seeking damages in excess of \$75,000. Therefore the total amount ultimately sought by the Plaintiff exceeds the jurisdictional minimum.

FEDERAL DIVERSITY JURISDICTION

11. A United States District Court "shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1331(a). The amount in controversy is tested by the value of the suit's intended benefit to the plaintiff. *See Massachusetts State Pharmaceutical Ass'n v. Federal Prescription Service, Inc.*, 431 F.2d 130, 132 (8th Circuit 1970).

12. For the purposes of 28 U.S.C. § 1331, “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” 28 U.S.C. § 1331(c).

13. Plaintiff and Defendant are citizens of different states such that complete diversity among the parties exists. 28 U.S.C. § 1331(a)(1).

14. Accordingly, this Court has original jurisdiction over this action based on diversity of citizenship and the amount in controversy pursuant to 28 U.S.C. § 1332.

15. Defendant Loya is entitled to remove the Complaint to this Court pursuant to 28 U.S.C. § 1441.

DEFENSES

16. By filing this Notice of Removal, Loya does not waive any available defenses under their insurance policy or any that are available in equity or law.

17. Plaintiff has confirmed that they are not opposed to this removal as required by Rule 7.1.

Respectfully submitted this 9th day of May, 2018.

CROWLEY FLECK PLLP

By /s/ KIMBERLY S. MORE
Kimberly S. More

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing served this 9th day of May, 2018, via US Mail and E-mail to the following:

Roland Durocher, Esq.
Hartelius, Durocher & Winter, P.C.
118 6th Street South P.O. Box 1629
Great Falls, MT 59403
RDurocher@mtlawyers.net
Attorneys for Plaintiff